

June 12, 2001

DEFENSE LOGISTICS **INFORMATION SERVICE**/DEFENSE REUTILIZATION AND
MARKETING SERVICE
FREEDOM OF INFORMATION ACT PROGRAM
(RCS: DD-PA(A) 1365)
(Further supplementation is prohibited.)

A. REFERENCES

1. DoD 5400.7-I, Department of Defense (DOD) Freedom of Information Act (FOIA) Program.
2. DLAR 5400.14, Defense Logistics Agency (DLA) Freedom of Information Act (FOIA) Program.
3. **DLSC Instruction 5400.1, Defense Logistics Services Center/Defense Reutilization and Marketing Service Freedom of Information Act Program, October 1, 1996, (hereby superseded).**

B. PURPOSE

1. This instruction supersedes A3.
2. This instruction provides the procedures for the Defense Logistics **Information Service (DLIS)** and Defense Reutilization and Marketing Service (DRMS) in the implementation of the DOD Freedom of Information Act (FOIA) Program.

C. APPLICABILITY AND SCOPE. This instruction applies to **DLIS**, HQ DRMS and DRMS field activities.

D. DEFINITIONS. As used in this instruction, the following terms and meanings shall be applicable.

1. FOIA Request. A written request for records, made by any person, including a member of the public (U.S. or foreign citizen), an organization or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA, DoD 5400.7-I, DOD Freedom of Information Act Program, DLAR 5400.14, DLA Freedom of Information Act Program or this instruction.

2. Time Limit. Refers to 20 business days to make a response after proper receipt of request.

3. Date of Receipt. Date the request was received in the FOIA office.

4. Control System. A request for records that invoke the FOIA shall enter a formal control system designed to ensure compliance with the FOIA.

5. (a)(1) Material. Material described in 5 U.S.C. 552(a)(1) consisting of descriptions of central and field organizations and, to the extent that they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports or examinations, and any amendment, revision or report of the aforementioned.

6. (a)(2) Material. Material described in 5 U.S.C. 552(a)(2) encompassing:

a. Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used or relied upon as precedents in future adjudications.

b. Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register.

c. Administrative staff manuals and instructions, or portions thereof, that establish DLA, **DLIS** and HQ DRMS policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties or to instructions relating only to the internal management of the DLA activities. Examples of manuals and instructions not normally made available include, but are not limited to the following:

(1) Those issued for audit, investigation and inspection purposes or those that prescribe operational tactics, standards of performance or criteria for defense, prosecution or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems and foreign intelligence operations.

7. Agency Record

a. The products of data compilation, such as all books, papers, maps and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in **DLIS**, HQ DRMS and DRMS activities possession and control at the time the FOIA request is made.

b. The following are not included within the definition of the word "record":

(1) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence.

(2) Administrative tools by which records are created, stored and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions or procedures of **DLIS**, HQ DRMS and DRMS activities. Normally, computer software, including source code, object code and listings of source and object codes, regardless of medium, are not agency records. (This does not include the underlying data that is processed and produced by such software and

which may in some instances be stored with the software.) Exceptions to this position are outlined in subparagraph c below.

(3) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(4) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(5) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

c. In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(1) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(2) Where the software itself reveals information about organizations, policies, functions, decisions or procedures of a DLA activity, such as computer models used to forecast budget outlays, calculate retirement system costs or optimization models on travel costs.

(3) See paragraph E19b(1)(c) for guidance on release determinations of computer software.

d. A record must exist and be in the possession and control of **DLIS**, HQ DRMS or DRMS activities at the time of the request to be considered subject to this instruction and the FOIA. There is no obligation to create, compile or obtain a record to satisfy a FOIA request.

e. If unaltered publications and processed documents, such as regulations, manuals, maps, charts and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply, and requests for such need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the Federal Register also require no processing under the FOIA. In such cases, **DLIS**, HQ DRMS and DRMS field activities should direct the requester to the appropriate source to obtain the record.

8. Electronic Data. Electronic data are those records and information which are created, stored and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store or retrieve electronic data. See paragraphs D7b(2) and D7c above for a discussion of computer software.

9. Requester Categories

a. "Commercial Requesters" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interest of the requester or the person on whose behalf the request is made.

b. "Educational Institution Requesters" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution

of vocational education, which operates a program or programs of scholarly research.

c. "Noncommercial Scientific Institution". The terms 'noncommercial scientific institution' refers to an institution that is not operated on a 'commercial' basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

d. "Representatives of the News Media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

e. "All Others Requesters" do not fit into any of the above categories.

10. Extension of Time

a. Formal Extension. When additional time is needed and is requested in writing from the requester.

b. Informal Extension. Additional time is needed and requested orally from the requester.

11. Fee Waiver. The requester requests all fees be waived and shows justification as to why.

12. Releasing Official. Any individual with sufficient knowledge of a requested record or program to allow him or her to determine if harm would come through release. Releasing officials are at all levels and may be selected to review a particular document because of their expertise in the subject area. The level must be high enough to make sure that releases are made according to the policies outlined here. The authority to release records of a routine nature, such as fact sheets or local directories, may be delegated to any individual at the discretion of the denial authority. In doubtful cases, releasing officials may consult with the FOIA staff or servicing counsel prior to release.

13. Initial Denial Authority (IDA). An official who has been granted authority by the Director, DLA, to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure or to issue a "no record" determination. These include the Directors (or equivalent) of HQ DLA principal staff elements (PSEs) and the Commander (or equivalent) of primary level field activities (PLFAs). For fee waiver and requester category determinations, the initial denial authority is the FOIA manager or head of the FOIA unit.

14. Appellate Authority. The Commander, **DLIS**/HQ DRMS or his designee, except for fee waivers and category determinations. The appellate authority for such appeals is the Director, DLA.

15. Administrative Appeal. A request made under the FOIA by a member of the general public asking that appellate authority to reverse an initial denial authority's decision to withhold all or part of a requested record, to review a "no record found" determination, or to reverse a decision to deny a request for waiver or reduction of fees.

16. Public Interest Disclosures. Those disclosures which shed light on DLA performance of its statutory duties and thus inform citizens

about what their Government is doing. The "public interest", however, is not fostered by disclosure of information about private citizens that is accumulated in various Governmental files that reveals little or nothing about an agency's or official's own conduct. The public interest is one of several factors considered in determining if a fee waiver is appropriate (see paragraph E21c(2)).

17. Public Domain. Nonexempt records released under the authority of this instruction are considered to be in the public domain. Such records may also be made available in reading rooms to facilitate public access. Exempt records released pursuant to this instruction or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional committee, the release records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this instruction apply if the same individual seeks the records in a private or personal capacity.

E. PROCEDURES

1. FOIA Channels. If **DLIS**, HQ DRMS and/or DRMS activities personnel receive a FOIA request directly from the public that has not been logged in and processed through the FOIA office, they will immediately forward it to the local FOIA manager.

2. Central Log System. Each FOIA manager will maintain a central log of FOIA requests received within the activity to ensure compliance with the time limits, accurate cost accounting, fee assessment and reporting. DLA Form 1805, Freedom of Information Act Request Control Log, may be used for this purpose.

3. Time Limit. FOIA requests must be responded to within 20 business days after proper receipt, except in unusual circumstances outlined in paragraph E12 below. A request is considered properly received on the date the FOIA manager receives it, provided the request has been reasonably described and the requester has either agreed to pay assessable fees or has provided sufficient justification for a fee waiver.

4. Description of the Requested Record

a. Identification of the record desired is the responsibility of the member of the public who requests the record. The requester must provide a description of the desired record that enables the activity to locate the record with a reasonable amount of effort. When **DLIS**, HQ DRMS or a DRMS activity receives a request that does not reasonably describe the requested record, it shall notify the requester of this. The requester may be asked to provide the type of information outlined in paragraph b below. Activities are not obligated to act on the request until the requester responds to the particular letter. When practicable, **DLIS**, HQ DRMS and DRMS activities shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

b. The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(1) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created and originator.

(2) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

c. Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the activity's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search. The decision of the **DLIS**, HQ DRMS or DRMS activity concerning reasonableness of description must be based on knowledge of its files. If the description enables that activity's personnel to locate the record with reasonable effort, the description is adequate.

d. Creating a Record

(1) There is no obligation to create or compile a record to satisfy a FOIA request. An activity, however, may compile a new record when doing so would result in a more useful response to the requester or be less burdensome to the activity. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would have been charged for providing the existing record. Fee assessments shall be in accordance with paragraph 21.

(2) With respect to electronic data, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources.

5. Screening Requests

a. Before assigning a request for search, the FOIA manager will screen the request for defects in the description, the requester category and the issue of fees. FOIA managers will notify requesters of any such defects and, wherever possible, offer assistance to help remedy the defects. If the FOIA manager must consult with the requester on any of the following issues, then the request is not considered to be properly received and the 20 business day time limit does not begin or resume until the requester has satisfactorily addressed the issue.

(1) Payments in Arrears. If a requester has failed to pay fees for a previous request, then the FOIA manager need not process the current request until the requester pays the delinquent amount. In such situations, the FOIA manager will notify the requester of the defect and provide an opportunity to forward payment along with any assessable interest. At that time, the FOIA manager may, at his or her discretion, demand that the requester also pay an estimated fee for the current request.

(2) Faulty Description. If the request is not reasonably described, the FOIA manager will notify the requester of the defect and advise that a search cannot be initiated without more specific information. In making such determinations, FOIA managers may consult with offices of primary interest to determine the details that are needed to conduct a search. See paragraph 4 above and 8b below.

(3) Requester Category and Fees. The FOIA manager will analyze the request to determine the category of the requester. If the category of the requester is different than that claimed by the requester, the FOIA manager will:

(a) Notify the requester that he or she should provide additional justification to warrant the category claimed and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester and within a reasonable period of time (i.e., 30 calendar days), the FOIA manager shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights.

(b) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the FOIA manager. Requesters must submit a fee declaration appropriate for the following categories:

[1] Commercial. Requesters must indicate a willingness to pay all search, review and duplication costs.

[2] Educational or Noncommercial Scientific Institution or News Media. Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

[3] All Others. Requesters must indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are desired.

[4] Justification for Fee Waivers. If the requester has asked for a fee waiver but failed to provide a justification, FOIA managers will ask requester to address the fee waiver criteria before further processing the request. FOIA managers are reminded that with some types of records, a final decision cannot be made on waiver until after the records have been surfaced, reviewed and the public benefit and previous public availability assessed.

b. In cases where there is disagreement on the category of the requester or there is lack of justification for fee waiver, the FOIA manager may process the request without further contacting the requester if he or she believes it can be processed within the automatic \$15 waiver limit.

6. Providing Estimates. **DLIS**, HQ DRMS and DRMS activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among **DLIS**, HQ DRMS and DRMS activities and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

7. Accumulating Fees. Requesters receiving the first 2 hours of search and the first 100 pages of duplication without charge are entitled to such **only once per request**. Consequently, if *DLIS*, HQ DRMS or DRMS activities, after completing its portion of a request, finds it necessary to refer the request to another DLA activity or another DoD component to act on their portion of the request, the referring activity shall inform the recipient of the expended amount of search time and duplication cost to date.

8. Internal Processing

a. Upon making a determination that the request is reasonably described, that the fee issue has been settled, and that the requester does not owe for a prior request, the FOIA manager will assign the request to the appropriate office of primary interest (OPI) for handling and provide instructions on the category of the requester, the fees to be charged or waived, and what actions the OPI is to take. DLA Form 1471, Freedom of Information Act Request, may be used for this purpose. OPIs will keep track of time expended on DLA Form 1786, Freedom of Information Act Cost Sheet.

b. After reviewing a request, the OPI may determine, based on knowledge of the files and programs, that a request is, in fact, not reasonably described. OPIs will notify FOIA managers of such defects immediately so that further details may be sought from the requester. Any delays on the requester's part in receiving more detailed information will not count toward the 20 business day time limit.

9. Initial Determinations

a. Reasons for Not Releasing a Record. There are seven reasons for not complying with a request for record:

(1) The request is transferred to another DLA activity, DoD component or to another Federal agency.

(2) *DLIS*, HQ DRMS or DRMS activities determine through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. Responding officials will advise requesters of the right to appeal such determinations. See paragraph 11e below for more detail on processing "no record" response.

(3) A record has not been described with sufficient particularity to enable *DLIS*, HQ DRMS or DRMS activities to locate it by conducting a reasonable search. See paragraph 4 above.

(4) The requester has failed unreasonably to comply with procedural requirements, including payment of fees imposed by this instruction.

(5) The request is withdrawn by the requester.

(6) The information requested is not a record within the meaning of the FOIA and this instruction.

(7) The record is denied in accordance with procedures set forth in the FOIA and this instruction.

b. Reasonably Segregable Portions. Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

10. Preparing Documents for Public Release. Releasing officials are to follow procedures in paragraph 18f below prior to releasing documents to the public. These procedures will also apply to classified documents with the exception that the classified portions will be cut out rather than blackened, taped or whited out.

11. Response to Requester

a. Time Limits. Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 20 business days after receipt of the request by the FOIA manager. When a decision is made to release a record, a copy should be made available promptly to the requester.

b. Acknowledging Date of Receipt. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

c. Billing. When fees are being levied, the response to the requester will contain a billing paragraph. Responding officials will advise requesters to make checks or money orders payable to U.S. Treasury and forward them to the FOIA manager of the PLFA that incurred the expense. See paragraph E20 below for wording for the billing paragraph. FOIA managers will notify DLA, DSS-C of names and addresses of requesters who have failed to pay after a second billing has been mailed and 30-days have elapsed without payment.

d. Full and Partial Denials

(1) When a request for a record is denied in whole or in part on the basis of one or more of the exemptions (see paragraph E19 below), the initial denial authority shall inform the requester in writing and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemption(s) on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to the Director, DLA. The sample letter of denial may be used.

(2) FOIA managers shall forward a copy of each letter of denial to Director, DLA, ATTN: DSS-C, 8725 John J. Kingman Road, Suite 2533, Ft. Belvoir, VA 22060-6221. Do not include attachments, the incoming request or any backup material.

e. Providing "No Record" Response

(1) If no documents can be located in response to a FOIA request, the initial denial authority will so advise the requester. Requesters will also be advised that, if they consider the response to be adverse, they may file an appeal within 60 calendar days from the date of the response. Requesters are to be advised to address appeals to the local FOIA manager and include the case number and reasons why they believe the **DLIS**, HQ DRMS or DRMS activities should have records on the subject matter.

(2) Before a formal 'no record' response is issued, OPI will verify that the requester has adequately described the record. If additional details will aid the search, then the requester will be asked to provide those details.

(3) In such cases where the requested record has been destroyed, the initial denial authority will confirm that the record was retained for the period authorized in DLAI 5015.1 before issuing a formal response. In responding to the requesters in these cases, advise the requester that the records were properly destroyed according to Agency rules for record disposition and give the right to appeal as outlined. However, do not ask the requester to provide reasons why the activity should have the records.

(4) Upon receipt of an appeal, the FOIA manager will direct that a second search be conducted using any information supplied by the requester. If the second search produces no documents, the appeal will be forwarded to Director, DLA, ATTN: DSS-C, 8725 John J. Kingman Road, Suite 2533, Ft. Belvoir, VA 22060-6221, along with a copy of the case file. The FOIA manager will include a copy of the DLA Form 1786 and an explanation of the method of search and the types of offices searched. In cases where the "no record" response was issued because the records have been destroyed, the FOIA manager will verify that the records were destroyed as provided for in DLAI 5015.1 and provide a statement to that effect.

(5) FOIA managers will ensure that a copy of each 'no record' response letter is forwarded to Director, DLA, ATTN: DSS-C, 8725 John J. Kingman Rd., Suite 2533, Ft. Belvoir, VA 22060-6221. Do not include attachments, the incoming request or any backup material.

f. Coordination. OPIs will ensure that the proposed response is fully coordinated with offices having an interest in the request. Proposed responses to FOIA requests from members of the Congress will be coordinated with DLA-Y or the local Congressional Affairs focal point.

12. Extensions of Time

a. Formal Extensions. In unusual circumstances, when additional time is needed to respond, the FOIA manager will acknowledge the request in writing within the 20 business day period, describe the circumstances requiring the delay and indicate the anticipated date for substantive response. The unusual circumstances that may be cited to justify delay are:

(1) Location. The requested record is located in whole or in part at places other than the office processing the request.

(2) Volume. The request requires the collection and evaluation of a substantial number of records.

(3) Consultation. Consultation is required with other DoD components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this instruction or should be released as a matter of discretion.

b. Informal Extensions. Where practical and expedient, the FOIA manager or official designated to respond may negotiate with the requester and arrange for an informal extension. Such extensions may be appropriate in instances where the records have to be ordered from a record repository; where the record has been sent out for commercial printing and is not expected back before the 20 business day time has elapsed; and similar circumstances. In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated

date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Since the requester still retains the right to treat this delay as a defacto denial with full administrative remedies, formal extensions should be issued only when essential.

13. Misdirected Requests. Misdirected requests shall be forwarded promptly to the FOIA manager of the DLA activity, DoD component or Federal agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the FOIA manager of the PLFA that controls the records requested.

14. Records of Contractors and Other Non-U.S. Government Sources

a. Executive Order 12600 of June 23, 1987 establishes predisclosure notification procedures for confidential commercial information. When a request is received for a record that was obtained from a contractor or other non-U.S. Government source or for a record containing information clearly identified as having been provided by a contractor or other non-U.S. Government sources, the source of the record of information [also known as 'the submitter' for matters pertaining to proprietary data under 5 U.S.C. 522(b)(4)] (see exemption 4) shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. The following procedures will be followed:

(1) The person designated to respond will provide the source with a copy of the incoming request, a copy of the documents responsive to the request, and letter of instruction. The notification letter will be addressed to the president of the entity or the entity's counsel and sent by return receipt mail.

(2) When a substantial issue has been raised, the *DLIS*, HQ DRMS or DRMS activity may seek additional information from the source and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved.

(3) Any objections to release will be evaluated and the source provided with a copy of the activity's final decision. Where a decision is made to release information claimed to be exempt, the source will be notified that the information will be released on a specified date unless the source seeks a restraining order or takes court action to prevent disclosure. Evaluators are cautioned that any decision to disclose information claimed to be exempt under exemption (b)(4) must be made by an official equivalent in rank to the initial denial authority.

(4) When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the FOIA manager will notify the requester and suspend action on the request until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the FOIA manager shall promptly notify the submitter of this action.

b. These procedures are required for those FOIA requests or data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established

that it would be made available to the public upon request, there is no obligation to notify the source.

c. These coordination provisions also apply to any non-U.S. Government record in the possession and control of DLA from multinational organizations, such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through Department of State.

15. File of Initial Denials. Copies of all initial denials shall be maintained by **DLIS**, HQ DRMS and DRMS activities in a form suitable for rapid retrieval, periodic statistical compilation and management evaluation.

16. Special Mail Services. **DLIS**, HQ DRMS and DRMS activities are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

17. Receipt Accounts. The Treasurer of the United States has established Receipt Account 3210 for use in depositing search, review and duplication fees collected under the FOIA. Upon receipt of payment, the FOIA manager will complete **DLIS** Form 1702, FOI Check Register, and forward it along with the check or money order to DFAS-CO/**DRMS-R** liaison office. FOIA managers will cite accounting classification 21R3210.0004 on **DLIS** Form 1702. This account will not, however, be used for depositing receipts for technical information released under the FOIA, industrially funded activities and non-appropriated funded activities. Instead, payments for these shall be deposited to the appropriate fund.

18. For Official Use Only (FOUO)

a. General Provision

(1) FOUO Limitations. Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being "For Official Use Only". No other material shall be considered or marked "For Official Use Only". FOUO markings are not to be used as an anemic form of classification to protect national security interests.

(2) Prior FOUO Application. The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemptions apply, the record may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(3) Historical Papers. Records such as notes, working papers, and drafts retained as historical evidence of DLA actions enjoy no special status apart from the exemptions under the FOIA.

(4) Distribution Statement. Information in a technical document that requires a distribution statement pursuant to **DoD 5010.12-M** shall bear that statement and may be marked FOUO, as appropriate.

b. Marking Records

(1) Time to Mark Records. The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(2) Location of Markings

(a) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on each page containing FOUO information, and on the outside of the back cover (if any). Where appropriate, the marking may contain a more specific warning (such as "Negotiation Sensitive") to alert handlers to the special nature of the FOUO material.

(b) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(c) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked 'For Official Use Only' at the bottom of the page.

(d) Other records, such as photographs, films, cassettes, slides, disks, and diskettes shall be marked 'For Official Use Only' or 'FOUO' in a manner that ensures that a recipient or viewer is aware of the status of the information therein. Both the information and the product that houses it will be marked. DLA Label 1804, For Official Use Only Sticker, may be used to label diskettes, jackets, film canisters and similar housing devices.

(e) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by tying or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption(s) _____ apply.

c. Dissemination and Transmission for Official Business

(1) Release and Transmission Procedures. Until FOUO status is terminated, the release and transmission instructions that follow apply:

(a) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(b) DLA holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a Government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(c) Release of FOUO information to Members of Congress is governed by DLAR 5400.12. Records released to the Congress or GAO

should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(2) Transporting FOUO Information. Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or first-class parcel post. Bulky shipments, such as distributions of FOUO publications that otherwise qualify under postal regulations, may be sent fourth-class mail.

(3) Electrically Transmitted Messages. Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (US Supp 1) for FOUO information.

d. Safeguarding FOUO Information. DLA Form 22, For Official Use Only Cover Sheet, may be used as a cover sheet when FOUO is in use or transit. However, it shall be removed before the FOUO document is filed. DLA Label 1804, For Official Use Only Sticker, is authorized for use. In addition, the following procedures will be employed to safeguard FOUO records.

(1) During Duty Hours. During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to nongovernmental personnel.

(2) During Nonduty Hours. At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks or bookcases. FOUO records that are subject to the provisions of Public Law 86-36 shall meet the safeguards outlined for that group of records.

e. Termination, Disposal and Unauthorized Disclosures

(1) Termination. The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified to the extent practical. Upon notification, holders shall efface or remove "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(2) Disposal

(a) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense

balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(b) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. Chapter 33 and DLAI 5015.1.

(3) Unauthorized Disclosure. The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in civil and criminal sanctions against responsible persons. The disclosing activity shall inform the DoD component or DLA activity that originated the FOUO information of the unauthorized disclosure.

f. Preparing FOUO Documents for Public Release

(1) Full Release. When a determination has been made that a FOUO document may be fully released to a requester under any public information program, the FOUO markings will be removed from the requester's copy prior to release. In cases where a person seeks access to his or her own record and the record is marked FOUO to protect that person's personal or proprietary interests, the FOUO marks will be deleted from the requester's copy prior to release, even though the FOUO status has not been terminated. In such cases, the official file copy will retain the FOUO warning. See Note below.

(2) Partial Releases. When a determination has been made that a document marked as FOUO may be partly released to a requester after removing some or all of the FOUO portions, then the exempt portions will be taped out, blackened out, whited out or cut out and a copy reproduced for the requester from the marked up copy. Initial denial authorities will ensure that the deleted portion cannot be read and that the FOUO marks have been lined through prior to release.

NOTE: The removal of the FOUO marks does not constitute a denial for FOIA purposes.

19. FOIA Exemptions. The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law. A discretionary release of a record to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. A sample denial letter is at E20.

a. Exemption 1, 5 U.S.C. 552(b)(1). Those properly and currently classified in the interest of national defense of foreign policy, as specifically authorized under the criteria established by executive order and implemented by DLAR 5200.12. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DLAR 5200.12, Section 2-204f apply. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DLA activities shall neither confirm nor deny the existence or nonexistence of the record being requested. A 'refusal to confirm or deny' response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a 'no record' response when a record does not exist, and a 'refusal to confirm or deny' when a record does exist will itself disclose national security information.

(2) Information that concerns one or more of the classification categories established by executive order and DLAR 5200.12 shall be classified if its unauthorized disclosure, either by itself in the context of other information, reasonably could be expected to cause damage to the national security.

b. Exemption 2, 5 U.S.C. 552(b)(2). Those related solely to the internal personnel rules and practices of DLA or any of its activities. This exemption has two profiles which are sometimes referred to as "high 2" and "low 2".

(1) "High 2": Records qualifying under "high 2" are those containing or constituting statutes, rules, regulations, orders, manuals, directives and instructions the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of DLA. Examples include but are not necessarily limited to the following:

(a) Those operating rules, guidelines and manuals for DLA investigators, inspectors, auditors or examiners that must remain privileged in order for the DLA activity to fulfill a legal requirement.

(b) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement or promotion.

(c) Computer software meeting the standards of the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) "Low 2": Records qualifying under the "low 2" profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include but are not necessarily limited to the following: Rules of personnel use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications and similar administrative markings.

c. Exemption 3, 5 U.S.C. 552(b)(3)

(1) Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(a) National Security Agency Information Exemption, Public Law 86-36, Section 6.

(b) Patent Secrecy, 35 U.S.C. 181-188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(c) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(d) Communication Intelligence, 18 U.S.C. 798.

(e) Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25.

(f) Confidentiality of Medical Quality Records: Qualified Immunity participants, 10 U.S.C. 1102.

(g) Physical Protection of Special Nuclear Material: Limitation of Dissemination of Unclassified Information, 10 U.S.C. 128.

(h) Protection of Intelligence Sources and Methods, 50 U.S.C. 403(d)(3).

(i) Procurement Integrity, 41 U.S.C. 423.

(2) Cite the specific sections when invoking the Atomic Energy Act of 1954 or the National Security Act of 1947.

(3) To qualify under exemption (b)(3), the statute must contain clear wording that the information covered will not be disclosed. The following examples are not (b)(3) statutes:

5 U.S.C. 552a - Privacy Act

17 U.S.C. 101 et seq. - Copyright Act

18 U.S.C. 793 - Gathering, Transmitting or Losing Defense Information

18 U.S.C. 794 - Gathering or Delivering Defense Information to Aid Foreign Governments

18 U.S.C. 1905 - Trade Secrets Act

28 U.S.C. 1498 - Patent and Copyright Cases

d. Exemption 4, 5 U.S.C. 552(b)(4). Those containing trade secrets or commercial or financial information that DLA receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries or other proprietary data. See also Title 32 Code of Federal Regulations 286h, Release of Acquisition-Related Information.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and

adjust pay schedules applicable to the prevailing wage rate of employees within DoD.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interest in such data in accordance with 10 U.S.C. 2320-2321 and DoD Federal Acquisition Regulation Supplement (DFARS), 48 CFR Subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (see paragraph c(1)(e) above).

(7) Computer software meeting the conditions of paragraph D7c, this instruction, which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

NOTE: See Executive Order 12600 and paragraph E14 of this instruction for detailed on predisclosure notification procedures.

e. Exemption 5, 5 U.S.C. 552(B)(5). Except as provided in paragraphs (2) through (5), below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), or within or among DoD components. Also exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege.

(1) Examples include:

(a) The nonfactual portions of staff papers and reports containing staff evaluations, advice, opinions or suggestions.

(b) Advice, suggestions or evaluations prepared on behalf of DLA by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(c) Those nonfactual portions of evaluations by DLA personnel of contractors and their products.

(d) Information of a speculative, tentative or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interest or would impede legitimate government functions.

(e) Trade secret or other confidential research, development or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

(f) Records that are exchanged among DLA personnel and within and among DoD components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, state or military court, as well as records that qualify for the attorney-client privilege.

(g) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations or surveys pertaining

to safety, security or the internal management, administration or operation of DLA or one or more DoD components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(h) Computer software meeting the standards of paragraph D7c, which is deliberative in nature, the disclosure of which would inhibit or chill the decision making process. In this situation, the use of software must be closely examined to ensure its deliberative nature.

(i) Planning, programming and budgetary information which is involved in the defense planning and resource allocation process.

(2) If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the agency (i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing) then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on agency maintaining its confidentiality, then the record or document need not be made available under this instruction. Consult with servicing Counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(3) Intra- or inter-agency memoranda or letters that are factual or those reasonably segregable portions that are factual are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

f. Exemption 6, U.S.C. 552(B)(6). Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act system of records that would constitute a clearly unwarranted invasion of privacy is prohibited and could subject the releaser to civil and criminal penalties.

(1) Examples of 'Other Files'

(a) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces and the eligibility of individuals (civilian, military or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(b) Files containing reports, records and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) Addresses. Home addresses are normally not releasable without the consent of the individuals concerned. In addition, lists of DoD military and civilian personnel names and duty addresses who are assigned to units that are sensitive, routinely deployable or stationed in foreign territories may be withheld under this exemption since release can constitute a clearly unwarranted invasion of personal privacy.

(a) Privacy Interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information and the fact that a requester invokes FOIA to obtain these records indicate that the information is not freely available.

(b) Sensitive, Deployable or Overseas Units. Published telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable or stationed in foreign territories are withholdable under this exemption.

(3) Deceased Persons. This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(4) Privacy Act Interface. Individual's personnel, medical or similar file may be withheld from their designated legal representative only to the extent consistent with DLAR 5400.21 and DLAH 5400.1.

(5) Third Party Personal Information. A clearly unwarranted invasion of the privacy of the third party persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record. When withholding third party personal information from the subject of the record, legal counsel should first be consulted.

(6) Releasing Information about Federal Civilian Employees and Military Members. Personal details of a Federal civilian employee's or military member's service may be withheld under exemption 6. However, the following information will be released to the public upon request:

(a) Name.

(b) Present and past position titles, grades, gross salaries, and duty stations (but see paragraph (2)(b) above).

(c) Duty status at any given time (e.g., whether on sick leave, annual leave, temporary duty, etc.).

(d) Unclassified performance rating elements, but not the rating itself.

(e) Unclassified position descriptions.

(f) Training and professional qualifications.

(g) Information where there is clearly no privacy interests or exceptions. In doubtful cases, consult with DLA, CAAV or local counsel.

g. Exemption 7, 5 U.S.C. 552(b)(7). Records or information compiled for law enforcement purposes; i.e., civil, criminal or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption may be invoked to

prevent disclosure of documents not originally created for, but later gathered for, law enforcement purposes.

(1) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(a) Could reasonably be expected to interfere with enforcement proceedings. (5 U.S.C. 552(b)(7)(A))

(b) Would deprive a person of the right to a fair trial or to an impartial adjudication. (5 U.S.C. 552(b)(7)(B))

(c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record. (5 U.S.C. 552(b)(7)(C))

[1] This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DLA activities shall neither confirm nor deny the existence or nonexistence of the record being requested.

[2] A 'refusal to confirm or deny' response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a 'no records' response when a record does not exist and a 'refusal to confirm or deny' when a record does exist will itself disclose personally private information.

[3] Refusal to confirm or deny should not be used when (a) the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or (b) the person whose personal privacy is in jeopardy is deceased, and the agency is aware of that fact.

(d) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense, a State, local or foreign agency or authority, or any private institution which furnishes the information on a confidential basis. (5 U.S.C. 552(b)(7)(D))

(e) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation. (5 U.S.C. 552 (b)(7)(D))

(f) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. (5 U.S.C. 552(b)(7)(E))

(g) Could reasonably be expected to endanger the life or physical safety of any individual. (5 U.S.C. 552(b)(7)(F))

(2) Examples include:

(a) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(b) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained or any civil action filed against them by the United States.

(c) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement

agency or office within a DoD component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500,) is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DLAR 5400.21 and DLAH 5400.1.

(5) Exclusions. Excluded from the above exemption are the following two situations applicable to the Department of Defense:

(a) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, DoD components may, during only such times as that circumstance continues, treat the records of information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(b) Whenever informant records maintained by a criminal law enforcement organization within a DoD component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the component may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7, the response to the requester will state that no records were found.

h. Exemption 8, 5 U.S.C. 552(b)(8). Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

i. Exemption 9, 5 U.S.C. 552(b)(9). Those containing geological and geophysical information and data (including maps) concerning wells.

20. Sample Denial Letter

Dear _____,

This is in response to your Freedom of Information Act letter dated _____ requesting records pertaining to _____. Your request was received by our FOIA manager on _____.

NOTE: When the time to respond becomes an issue, acknowledge the date of receipt as italicized above.

One of the documents is exempt from public disclosure pursuant to 5 U.S.C. 552(b)(5) since it consists of predecisional opinions and recommendations, the release of which would harm the deliberative process of this agency. In applying this exemption, we first determined that the document represents a direct part of the deliberative process in that it makes recommendations and expresses opinions on policy matters. Second, we determined that the

recommendations have not been made a part of a final decision. We therefore conclude that the document meets the criteria for invoking exemption 5. *There are no reasonably segregable portions.*

NOTE: When fully denying a document, include the above italicized statement regarding segregable portions.

The remaining records are fully releasable and are enclosed.

You have the right to appeal this denial. Your appeal must be in writing, must be made within 60 days from the date of this letter and should include your reasons for reconsideration. Forward your appeal to the Director, Defense Logistics Agency, ATTN: CAAV, 8725 John J. Kingman Road, Suite 2533, Ft. Belvoir, VA 22060-6221. Please reference our case number _____ and attach a copy of this letter.

Fees in the amount of \$86.40 are levied against your request. This covers ½ hour of clerical search at \$12 per hour; 2.5 hours of professional review at \$25 per hour; the duplication of 50 pages at \$.15 per page; and authentication of 2 documents at \$5.20 each. This fee is currently due and payable. Please make your check payable to U.S. Treasury and forward it to Freedom of Information Office, Defense Logistics **Information Service**, ATTN: FOIA Officer, 74 Washington Avenue N, **Suite 7**, Battle Creek, MI 49017-3084. Include our case number on the face of your check. If not received within 30 days after this billing, interest will accrue at the rates set by the Secretary of the Treasury as provided for under the Debt Collection Act of 1982 (Public Law 97-365).

Sincerely,

NOTE: Full and partial denial letters must be coordinated with servicing counsel and signed by the head of the PSE or PLFA.

21. Fee Schedule

a. General

(1) Authorities. The Freedom of Information Act (5 U.S.C. 552), as amended by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et seq.); the Defense Authorization Act for FY 87, Section 954, (Public Law 99-661), as amended by the Defense Technical Corrections Act of 1987 (Public Law 100-26).

(2) Fee Restrictions. The fees described in this instruction apply to FOIA requests and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters) and duplication of documents, the collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as **DoD 7230.7**, which does not supersede the collection of fees under the FOIA. Nothing in this instruction shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular

types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(a)(vi)) means any statute that enables a Government agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. DLA activities should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIC, they inform requesters of the steps necessary to obtain records from those sources.

(3) Cost of Collecting Fees. No fees may be charged by any DLA activity if the costs of routine collection and processing of the fee is likely to equal or exceed the amount of the fee. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to **DLIS**, HQ DRMS or DRMS activity of receiving and recording a remittance and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in making such determinations.

b. Requester Categories

(1) Commercial Requesters

(a) The term "commercial use" request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, **DLIS**, HQ DRMS and DRMS activities must determine the use to which a requester will put the documents. Moreover, where an activity has reasonable cause to doubt the use to which a requester will put the records sought or where that use is not clear from the request itself, **DLIS**, HQ DRMS or DRMS activities should seek additional clarification before assigning the request to a specific category.

(b) Commercial requesters may be charged the full direct cost of:

- [1] Searching for documents.
- [2] Reviewing documents for release.
- [3] Duplicating the records sought.

(c) Commercial requesters (unlike other requesters) are not entitled to 2 hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a nonprofit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(2) Educational Institution Requesters

(a) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(b) Educational institutions whose purpose is scholarly research may be charged for document duplication (excluding charges for the first 100 pages) when it is determined that disclosure of the

records does not significantly enhance the public knowledge of the operations or activities of the DoD (see paragraph c(2) below).

(3) Noncommercial Scientific Institution Requesters

(a) The terms "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in paragraph b(1) above, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(b) Scientific institutions whose purpose is scientific research may be charged for document duplication (excluding charges for the first 100 pages) when it is determined that disclosure of the records does not significantly enhance the public knowledge of the operations or activities of the DoD (see paragraph c(2) below).

(4) Representative of the News Media

(a) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers or periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but **DLIS**, HQ DRMS and DRMS activities may also look to the past publication record of a requester in making this determination.

(b) To be eligible for inclusion in this category, a requester must meet the criteria in subparagraph (4)(a) above, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category.

(c) "Representative of the news media" does not include private libraries, private repositories of Government records or middlemen, such as information vendors or data brokers.

(d) News media representatives may be charged for document duplication (excluding charges for the first 100 pages) when it is determined that disclosure of the records does not significantly enhance the public knowledge of the operations or activities of the DoD (see subparagraph c below).

(4) All Other Requesters

(a) Requesters who do not fit into any of the above categories, will be placed in the "All Other" category.

(b) **DLIS**, HQ DRMS and DRMS activities shall charge fees which recover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and the first 100 pages of

duplication shall be furnished without charge (see paragraph E7). However, requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit assessment of duplication fees only (see DLAR 5400.21).

(c) **DLIS**, HQ DRMS and DRMS activities are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as described in paragraph D16 and paragraph c(2) below.

c. Fee Waivers

(1) Automatic Waivers. Fees shall be automatically waived for all requesters, regardless of category, when assessable costs for a FOIA request total \$15.00 or less.

(2) Waivers in the Public Interest

(a) Documents shall be furnished without charge or at a reduced charge when the **DLIS**, HQ DRMS or DRMS activity determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. FOIA managers will evaluate the public interest and the commercial interests of the requester using the following factors:

[1] Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government".

[a] The subject of the request. **DLIS**, HQ DRMS and DRMS activities should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of **DLIS**, HQ DRMS or DRMS activities. Requests for records in the possession of the **DLIS**, HQ DRMS or DRMS activities which were originated by nongovernment organizations and are sought for their intrinsic content rather than informative value will likely not contribute to public understanding of the operations or activities of **DLIS**, HQ DRMS or DRMS activities. An example of such records might be press clippings, magazine articles or records forwarding a particular opinion or concern from a member of the public regarding a **DLIS**, HQ DRMS or DRMS activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of **DLIS**, HQ DRMS or DRMS activities; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of **DLIS**, HQ DRMS or DRMS activities, based on historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of **DLIS**, HQ DRMS or DRMS activities.

[b] The informative value of the information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of **DLIS**, HQ DRMS or DRMS activities. While the subject of a request may contain information which concerns operations or activities of **DLIS**, HQ DRMS or DRMS activities, it may not always hold

great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record; the balance of which may contain only random words, fragmented sentences or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of **DLIS**, HQ DRMS or DRMS activities must be approached with caution and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of **DLIS**, HQ DRMS or DRMS activities.

[c] The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information and their intended means of dissemination to the public.

[d] The significance of the contribution to public understanding. In applying this factor, **DLIS**, HQ DRMS and DRMS activities must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding, which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. **DLIS**, HQ DRMS and DRMS activities shall not make value judgments as to whether the information is important enough to be made public.

[2] Disclosure of the information "is not primarily in the commercial interest of the requester".

[a] The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, **DLIS**, HQ DRMS and DRMS activities should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or noncommercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, **DLIS**, HQ DRMS and DRMS activities may draw inference from the requester's identity and circumstances of the request. **DLIS**, HQ DRMS and DRMS activities are reminded that in order to apply the commercial standards of the FOIA (see paragraph b(1)), the requester's commercial benefit must clearly override any personal or nonprofit interest.

[b] The primary interest in disclosure. Once a requester's commercial interest has been determined, **DLIS**, HQ DRMS and DRMS activities should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit either directly or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(b) The above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, **DLIS**, HQ DRMS or DRMS activity should rule in favor of the requester.

(c) The following additional circumstances describe situations where waiver or reductions of fees are most likely to be warranted:

[1] When a previous denial of records is reversed in total or in part and the assessable costs are not substantial (e.g., \$15 - \$30).

[2] When a record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested (see paragraph D7d).

d. Assessing Cost and Chargeable Fees

(1) General. The fee rates in this instruction shall be used to compute the costs associated with processing a given FOIA request. (See paragraph f below for FOIA requests involving technical data.) For reporting purposes, all time spent on a FOIA request, including time not chargeable to the requester, is to be recorded on DLA Form 1786. Fees may not be used to discourage requesters, and, to this end, FOIA fees to be charged a requester are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication. Costs shall be computed on time actually spent. Neither time-base nor dollar-based minimum charges for search, review and duplication are authorized except in the case of technical data requests.

(2) Cost Factors

(a) Direct Costs. Those expenditures an activity actually makes in searching for, reviewing (in the case of commercial requesters) and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16

percent of that rate to cover benefits) and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at paragraph e below. Not included in direct costs are overhead expenses such as costs of space, heat or lighting the facility in which the records are stored.

(b) Search. All time spent looking for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material within a document to determine if it or portions thereof are responsive to the request. Where **DLIS**, HQ DRMS or DRMS activity must travel to a separate location to conduct the search, the round trip travel time will be recorded as part of the search. **DLIS**, HQ DRMS or DRMS activity will ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both **DLIS**, HQ DRMS or DRMS activity and the requester. For example, **DLIS**, HQ DRMS and DRMS activities should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more the statutory exemptions is not search time, but review time.

(c) Computer Search. The direct cost of operating the computer equipment and the operator/programmer time. The computer equipment includes the central processing unit, input/output devices and memory capacity of the actual computer configuration. Where the direct cost cannot be computed, the standard rates in subparagraph e(2)(b) will be used. The computer operator or programmer time will include the time to determine how to conduct and subsequently execute the search. The computer operator or programmer's time will be at the established hourly rates in subparagraph e(2)(a) below. In assessing computer search fees for requesters entitled to 2 free hours of search, the 2 free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input/output devices and memory capacity equal \$24 (2 hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time.

(d) Duplication. The process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual or machine-readable documentation (e.g., magnetic tape or disk), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably usable. The requester shall be notified that the released copy is the best available and that the agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if an activity estimates that assessable duplication charges are likely to exceed \$25, it shall notify the requester of the estimate, unless the requester has indicated a willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with **DLIS**, HQ DRMS or DRMS activity personnel with the object of reformulating the request to reduce costs.

(e) Review. The process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or

policy issues regarding the application of exemptions. It should be noted that charges for commercial requester may be assessed only for the initial review. **DLIS**, HQ DRMS or DRMS activities may not charge for reviews required at the administrative appeal level for an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(f) Pages. Paper copies of a standard size, which will normally be 8 ½ x 11 or 11 x 14, or the equivalent in microfiche or computer disk form. Thus, requesters who qualify for 100 "pages" of duplication without charge would not be entitled to 100 microfiche or 100 computer disks. Instead, they would qualify for the equivalent of 100 pages; i.e., 5 fiche each containing 20 images or a computer diskette containing 100 pages of information.

(g) Indirect Costs. Costs incurred indirectly by an activity such as the cost of space, heating or lighting facilities and employee benefit programs. Indirect costs may only be charged to those FOIA requesters who seek technical data (see paragraph d above). Such costs are only included on DLA Form 1786 when billed to a technical data requester.

(3) Advance Payments. No **DLIS**, HQ DRMS or DRMS activity may require advance payment of any fee (i.e., payment before work is commenced or continued on a request) except in the following circumstances:

(a) Lack of Timely Payment. The requester has previously failed to pay fees in a timely fashion. As used in this sense, a timely fashion is 30 calendar days from the date of billing by the **DLIS**, HQ DRMS or DRMS activity (see subparagraph (4) below).

(b) Fees in Excess of \$250. The activity has determined that the fee will exceed \$250 and the activity has no payment history on the individual. In such cases, **DLIS**, HQ DRMS and DRMS activities may require an advanced payment of an amount up to the full estimated charges. Alternatively, the FOIA manager may notify the requester of the likely cost and obtain satisfactory assurance of full payment.

NOTE: In cases where fees will exceed \$250 and the requester has a favorable payment history, the FOIA manager may secure verbal agreement to pay the fees. **DLIS**, HQ DRMS and DRMS activities may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(4) Delinquent Accounts. Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), **DLIS**, HQ DRMS and DRMS activities may require the requester to pay the full amount owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the activity begins to process a new or pending request from the requester.

(5) Effect of the Debt Collection Act of 1982 (Public Law 97-365). The Debt Collection Act of 1982 (Public Law 97-365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. **DLIS**, HQ DRMS and DRMS activities may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. **DLIS**, HQ DRMS and DRMS activities should verify the current interest rate with the Defense Finance and Accounting Service

(DFAS). After one demand letter has been sent, and 30 calendar days have lapsed with no payment, **DLIS**, HQ DRMS and DRMS activities may submit the debt to DFAS-XR, P.O. Box 182317, Columbus, OH 43218-2317, for collection pursuant to the Debt Collection Act of 1982. DLA, CAAV will be notified of such action.

(6) Charging for Nonproductive Searches. **DLIS**, HQ DRMS and DRMS activities may charge for time spent searching for records, even if that search fails to locate records responsive to the request. **DLIS**, HQ DRMS and DRMS activities may also charge search time (and review in the case of commercial requesters) if records located are determined to be exempt from disclosure. In practice, if **DLIS**, HQ DRMS or DRMS activities estimates that search charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance of his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with **DLIS**, HQ DRMS or DRMS activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(7) Aggregating Requests. Except for requests that are for a commercial use, **DLIS**, HQ DRMS or DRMS activity may not charge for the first 2 hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When an activity reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period have been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and **DLIS**, HQ DRMS and DRMS activities should have a solid basis for determining that aggregation is warranted in such cases. **DLIS**, HQ DRMS and DRMS activities are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no cases may **DLIS**, HQ DRMS or DRMS activities aggregate multiple requests on unrelated subjects from one requester.

e. Collection of Fees and Fee Rates

(1) Collection of Fees. Collection of fees will normally be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance provided the conditions in paragraph d(3) above are satisfied.

(2) Fee Rates

(a) Manual Search Time

<u>Type</u>	<u>Grade</u>	<u>Hourly Rate(\$)</u>
Clerical	E9/GS8 and below	12
Professional	01/06/GS9-GS/GM15	25
Executive	07/GS/GM16/ES1 and above	45

(b) Computer Search. Add together the direct cost of the central processing unit (CPU), input/output devices and memory capacity of the actual computer configuration. To this figure, add the operator/programmer cost. Where direct costs of equipment cannot be determined, PLFAs may use the per minute rate for mainframe computers or the per hour rate for personal computers.

[1] Mainframe Computers. Direct costs of \$20 per minute of CPU time. CPU time is the number of seconds (or fractional) that the CPU is actually engaged in the task. If your mainframe is not set up to provide the number of CPU minutes used in a task, then the hourly rate for personal computers may be used. Note that the personal computer rate is the actual number of minutes that has passed on a conventional wall clock.

[2] Personal Computers. Direct costs of \$20 per hour of wall clock time. This rate covers the actual time that has elapsed on a conventional wall clock from task start to task completion.

[3] Operator/Programmers. Multiply the actual hours by the manual search rate in subparagraph (2)(a) above.

(c) Review Time (in the case of commercial requesters)

<u>Type</u>	<u>Grade</u>	<u>Hourly Rate(\$)</u>
Clerical	E9/GS8 and below	12
Professional	01/06/GS9-GS/GM15	25
Executive	07/GS/GM16/ES1 and above	45

(d) Duplication

<u>Type</u>	<u>Cost per Page (\$)</u>
Pre-Printed material	.02
Office copy	.15
Microfiche	.25

(e) Computer Copies. Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape).

(f) Audiovisual Documentary Materials. Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(g) Other Records. Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(h) Costs for Special Services. Complying with requests for special services is at the discretion of the **DLIS**, HQ DRMS and DRMS activities. Neither the FOIA, nor its fee structure covers these kinds of services. Therefore, **DLIS**, HQ DRMS and DRMS activities may recover the costs of special services requested after agreement has been obtained from the requester to pay for one or more of the following services:

[1] Certifying that records are true copies.

[2] Sending records by special methods, such as express mail.

[3] Depositing Fees. FOIA managers will deposit fees for FOIA services in the FOIA receipt account established by the Treasurer of the United States (see paragraph 17 above).

f. Fees for Technical Data

(1) Collection of Fees for Technical Data

(a) General. Technical data, other than technical data that discloses critical technology with military or space application, if

required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. The term technical data, as used in this instruction, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. **DLIS**, HQ DRMS and DRMS activities shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under paragraph d above for other types of information released under the FOIA.

(b) Depositing Fees for Technical Data. **DLIS**, HQ DRMS and DRMS activities shall not deposit fees for technical data into the U.S. Treasury Department's FOIA Receipt account (see paragraph 17 above). Instead, fees shall be deposited in the appropriate receipt account of the activity that incurred the expense.

(c) Waiver. **DLIS**, HQ DRMS and DRMS activities shall waive the payment of costs required in subparagraph (a) above, which are greater than the costs that would be required for release of this same information under paragraph f above if:

[1] The request is made by a citizen of the United States or a United States corporation and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, **DLIS**, HQ DRMS and DRMS activities may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

[2] The release of technical data is requested in order to comply with the terms of an international agreement; or

[3] **DLIS**, HQ DRMS or DRMS activity determines in accordance with the criteria in paragraph c(2) above that such a waiver is in the interest of the United States.

(2) Fee Rates for Technical Data

(a) Clerical search and Review Time (E9/GS8 and Below) \$13.25 per hour. A minimum charge of \$8.30 will apply.

(b) Professional and Executive Search and Review Time. Will be established at actual hourly rate prior to search or review. A minimum charge will be established at ½ hourly rates.

(c) Computer Search. Add together the direct cost of the CPU, input/output devices and memory capacity of the actual computer configuration. To this figure, add the operator/programmer cost. Where direct costs of equipment cannot be determined, PLFAs may use the

per minute rate for mainframe computers or the per hour rate for personal computers.

[1] Mainframe Computer. Direct costs of \$20 per minute of CPU time. CPU time is the number of seconds (or fractional) that the CPU is actually engaged in the task. If your mainframe is not set up to provide the number of CPU minutes used in a task, then the hourly rate for personal computers may be used. Note that the personal computer rate is the actual number of minutes that has passed on a conventional wall clock.

[2] Personal Computers. Direct costs of \$20 per hour of wall clock time. This rate covers the actual time that has elapsed on a conventional wall clock from task start to task completion.

[3] Operators/Programmers. Base charges on the actual time used by the operator/programmer in determining how to conduct and subsequently execute the search. Multiply the actual hours by the pre-established rate.

(d) Duplication

<u>Type</u>	<u>Cost</u>
Aerial photographs, specifications, permits, charts, blueprints and other technical documents	\$2.50
<u>Engineering Data (Microfilm)</u>	
<u>Aperture Cards:</u>	
Silver duplicate negative, per card	\$.75
When keypunched and verified, per card	\$.85
Diazo duplicate negative, per card	\$.65
When keypunched and verified, per card	\$.75
<u>Film</u>	
35mm roll film, per frame	\$.50
16mm roll film, per frame	\$.45
Paper prints (engineering drawings), each	\$1.50
Paper reprints of microfiche indices, each	\$.10

(e) Other Technical Data Records. Charges for any additional services not specifically provided for in subparagraph (2) above, consistent with **DoD 7230.7**, shall be made by **DLIS**, HQ DRMS and DRMS activities at the following rates:

Minimum charge for office copy (up to six images). . .	\$3.50
Each additional image.10
Each typewritten page.	3.50
Certification and validation with seal, each	5.20
Handdrawn plots or sketches, each hour or fraction	
Thereof.	12.00

22. Appeals

a. General

(1) Appeals to Record Denials. Requesters denied access to records under the provisions of paragraph 19 above or exemptions 2-9 may appeal such determinations to the Director, DLA. The appeal should be accompanied by a copy of the letter denying the initial request and contain the basis for disagreement with the initial refusal. A final agency decision will be made within the time limits of paragraph b below.

(2) Appeals to a No-Record Finding. Requesters have the right to appeal any no-record finding to the FOIA manager of the activity that issued the finding. The letter of appeal should include the case number and, where appropriate, reasons why the requester believes the

activity should have records on the subject matter. Using the information supplied by the requester, the FOIA manager will direct that a second search be conducted. If the second search produces no documents, the appeal will be forwarded to Director, DLA, ATTN: DSS-C, 8725 John J. Kingman Rd., Suite 2533, Ft. Belvoir, VA 22060-6221, along with a copy of the case file. The FOIA manager will include a copy of DLA Form 1786 and an explanation of the method of search and the types of offices searched. A final agency decision will be made within the time limits of paragraph b below.

(3) Appeals to Fee Waiver Denials or Requester Category Decisions. Requesters may appeal an initial determination regarding placement in a certain fee assessment category or waiver or reduction of fees when disclosure serves the public interest. Requesters will include a basis for disagreement and submit the appeal to the Director, DLA, ATTN: DSS-C, 8725 John J. Kingman Rd., Suite 2533, Ft. Belvoir, VA 22060-6221. A final agency decision will be made within the time limits of paragraph b below.

b. Time Limits

(1) Time Limits to File Appeals. The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification.

(2) Time of Receipt. An FOIA appeal and fee appeal is considered received by DLA when it reaches DSS-C. Misdirected appeals should be referred expeditiously to the appropriate office.

(3) Time Limits to Decide Appeals. Final determinations on appeals normally shall be made within 20 working days after receipt.

(4) Delay in Responding to an Appeal

(a) If additional time is needed due to unusual circumstances described in paragraph E12 of this instruction, the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(b) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph E12 of this instruction, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. **DLIS**, HQ DRMS and DRMS activities shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provide subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(c) When the appellate authority or the authority's representative must consult with the requester over an issue not previously settled, such as agreement to pay fees for documents previously denied, then any delays on the requester's part will not count toward the 20-day time limit.

c. Response to the Requester

(1) When an appellate authority makes a determination to release all or a portion of records withheld by an Initial Denial Authority (IDA), a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal to provide a requested record must be made in writing by the DLA Director or his designee. In the case of fee appeals, final refusal to waive or reduce fees must be made in writing by the Director, DLA, DSS-C. Record denial responses, at a minimum, shall conform to the following:

(a) The basis for the refusal shall be explained to the requester with regard to the applicable statutory exemption or exemptions invoked under provisions of this instruction.

(b) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(c) In the case of appeals for total denial of records, the response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(d) The response shall advise the requester of the right to judicial review.

d. Consultation

(1) Final refusal involving issues not previously resolved or that are known to be inconsistent with rulings of other DoD components ordinarily should not be made without first consulting with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Justice, ATTN: Office of Legal Policy, Office of Information and Policy, Washington DC 20530.

e. Case files of appeals and fee appeals shall be retained by DLA, DSS-C for a period of 6 years to meet the statute of limitations of claims requirement.

23. Judicial Actions

a. General

(1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the Director of DLA or an appellate designee; when DLA has failed to respond within the time limits prescribed by the FOIA; or when the Director of DLA or an appellate designee has affirmed a "no record" finding.

b. Jurisdiction. The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located or in the District of Columbia.

c. Burden of Proof. The burden of proof is on **DLIS**, HQ DRMS or DRMS activity to justify a refusal to provide a record. The court shall evaluate the *case de novo* (anew) and may elect to examine any requested record *in camera* (in private) to determine whether the denial was justified.

d. Actions by the Court

(1) When **DLIS**, HQ DRMS or DRMS activity has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow **DLIS**, HQ DRMS or DRMS activity additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DOD component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD component fails to comply with the court order to produce records that it determines have been withheld improperly.

e. Non-United States Government Source Information. A requester may bring suit in an U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the **DLIS**, DRMS or DRMS activity shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

f. Litigation Status Sheet. FOIA managers shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by **DLIS**, HQ DRMS and DRMS activity personnel. The Litigation Status Sheet at paragraph 24 provides a standard format for recording information concerning FOIA litigation. Whenever a complaint under the FOIA is filed in a U.S. District Court, **DLIS**, HQ DRMS and DRMS activity named in the complaint shall complete items 1 through 6 of the Litigation Status Sheet and forward it along with a copy of the complaint to Director, DLA, ATTN: CAAV, 8725 John J. Kingman Rd., Suite 2533, Ft. Belvoir, VA 22060-6221, for forwarding to the Office of the Secretary of Defense. An information copy will also be forwarded to the General Counsel, DLA, at the above address. A revised Litigation Status Sheet shall be provided at each stage of the litigation.

24. Litigation Status Sheet

- | | |
|-----------------------------------|-----------------------------|
| a. Case Number:* | h. Appeal (as appropriate): |
| b. Requester: | (1) Date Complaint Filed: |
| c. Document Title or Description: | (2) Court: |
| d. Litigation | (3) Case File Number* |

- | | |
|---|-------------------------|
| (1) Date Complaint Filed: | (4) Court's Findings: |
| (2) Court: | (5) Disciplinary Action |
| (3) Case File Number:* (as appropriate): | |
| e. Defendants (agency and individual): | |
| f. Remarks: (brief explanation of what the case is about) | |
| g. Court Action | |
| (1) Court's Findings: | |
| (2) Disciplinary Action (as appropriate) | |

*Number used by **DLIS**, HQ DRMS and DRMS activity for reference purposes.

25. Education and Training

a. General

(1) Educational and training programs will be established by the **DLIS**/DRMS FOIA manager to promote a positive attitude among **DLIS**, HQ DRMS and DRMS activity personnel and raise the level of understanding and appreciation of the **DLIS**/DRMS FOIA Program, thereby improving the interaction with members of the public and improving the public trust. The educational programs should be targeted toward all members of the PLFA, developing a general understanding and appreciation of the DLA FOIA Program. The training programs should be focused toward those personnel who are involved in the day-to-day processing of FOIA requests and should provide a thorough understanding of the procedures outlined in this instruction.

(2) **DLIS**, HQ DRMS and DRMS activities shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this instruction. The program should be designed to accomplish the following objectives:

(a) Familiarize personnel with the requirements of the FOIA and its implementation by this instruction.

(b) Instruct personnel who act on FOIA matters concerning the provisions of this instruction, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(c) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of the initial denial authorities.

(d) Advise personnel of the penalties for noncompliance with the FOIA.

b. Implementation. To ensure uniformity of interpretation, all major educational and training materials developed to implement this instruction shall be coordinated with the DLA Freedom of Information Act office (DLA, ATTN: DSS-C).

26. FOIA Mailing Addresses

HQ Defense Logistics Agency
ATTN: DSS-C
8725 John J. Kingman Rd.,
Suite 2533

Defense National
Stockpile Center
ATTN: DNSC-L
8725 John J. Kingman Rd

Ft. Belvoir, VA 22060-6221

Suite 3339
Ft. Belvoir, VA
22060-6223

Defense Supply Center, Columbus
3990 E. Broad Street
Columbus, OH 43216-5000

Defense Logistics
Information Service
ATTN: DLIS-VSS
74 Washington Ave N
Suite 7
Battle Creek, MI
49017-3084

Defense Energy Support Center
ATTN: DESC-CPB
8725 John J. Kingman Rd.,
Suite 2941
Ft. Belvoir, VA 22060-6222

Defense Supply Center, Richmond
ATTN: DSCR-DB
Richmond, VA 23297-5000

Defense Contract Mgmt
District
ATTN: DCMDE-FAS
495 Summer Street
Boston, MA 02210-2184

Defense Supply Center Philadelphia
ATTN: DSCP-PPA
2800 South 20th Street
Philadelphia, PA 19111-5096

Defense Distribution Region West
ATTN: DCMDW-FA
18901 South Wilmington Avenue
Carson, CA 90746-2856

F. RESPONSIBILITIES

1. Customer **Support** Branch, Customer **Services** Division, Directorate of **Customer Products and Services (DLIS-VSS)** will:

- a. Have overall responsibility for establishment and implementation of the **DLIS**/DRMS FOIA program, providing guidance and instructions to **DLIS**, HQ DRMS and DRMS field activities.
- b. Serve as the point of contact for referring members of the public to the proper source for Agency records.
- c. Serve as initial denial authority for record denials or where a determination has been made that the requested record cannot be found.
- d. Submit required reports to HQ DLA.

- e. Collect and deposit fees for **DLIS** FOIA services.
- f. Ensure that the procedural provisions of DOD 5400.7-I and DLAR 5400.14 and this instruction are followed in processing requests for records and pertinent data elements from members of the public.
- g. Receive, analyze and control all requests from the general public for release of information under the FOIA except requests for manufacturer code extracts to purify **DLIS** files.
- h. Analyze **DLIS** requests to determine if legal review is warranted as to the reliability of the information under the FOIA.
- i. Serve as appellate authority on fee waiver and category determinations.
- j. Process DRMS FOIA requests as follows:
 - (1) Record DRMS FOIA request and conduct necessary research to determine which DRMS office/directorate/activity should respond to the request.
 - (2) Prepare and attach DLA Form 1471, Freedom of Information Act Request, to the FOIA request establishing a suspense date which is 20 working days from the date the request is received in **DLIS-VSS**. Attach DLA Form 1786, Freedom of Information Act Cost Sheet, for figuring the cost of the request.
 - (3) Forward DLA Form 1471, DLA Form 1786 and the FOIA request to appropriate office/directorate/activity for response.
 - (4) Send out initial interim response informing requester of suspense date.
- k. Forward to the Directorate of Logistics Information Management (**DLIS-S**) all requests for manufacturer code extracts to purify **DLIS** files.
- l. Notify each **DLIS** requester of the cost involved.
- m. Forward **DLIS** FOIA checks to the **DRMS-R** Liaison Office for processing and deposit (see paragraph 17 above).
- n. Furnish DLA, DSS-C a copy of all **DLIS** denials to provide records/data after concurrence from DRMS-G and signature of **DLIS-D**.
- o. Identify to DRMS-G and **DLIS-D** issues that are unusual, precedent setting, matters of disagreement among components, or which otherwise require special attention or guidance to be referred to DLA-DG for review and evaluation.
- p. Establish safeguards to ensure that the official records of **DLIS** are properly safeguarded during the time they are made available for examination by a member of the public.
- q. Provide all requests/records as promptly as possible in accordance with the FOIA and DLAR 5400.14.
- r. Establish a training program for persons who may be involved in passing on requests from the public for records.
- s. Maintain and dispose of **DLIS** FOIA records and copies of DRMS FOIA records in accordance with DLAI 5015.1, **DLA Records Management Procedures and Records Schedule**.
- t. In the event the requested data should fall under the purview of the Privacy act of 1974, **DLIS-VSS** shall maintain an accounting of the data, nature, and purpose of each disclosure of a record, as well as the name and address of the person and agency to whom the disclosure was made. This accounting shall be retained for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.
- u. Maintain a log of all requests processed.
- v. Maintain this instruction in a current status and review it **biennially**.

2. Directorate of Logistics **Information** Management (**DLIS-S**) will:

a. Forward to **DLIS-VSS** all requests received from the general public for any information/data, except for requests for manufacturer code file extracts specifically requested to purify **DLIS** files, which will be furnished on a nonreimbursable basis by **DLIS-S** and not reported under FOIA.

b. Process all requests received from private industries for manufacturer code file extracts to purify **DLIS** files.

3. **Directorate** of Planning and Resource Management (**DLIS-R**) will:

a. Establish an equitable price structure in accordance with DoD fee structure for processing requests requiring computer services received from the general public.

b. Notify **DLIS-VSS** in writing of future revisions to these pricing structures.

c. Forward to **DLIS-VSS** all requests received from the general public for any information/data.

4. **DLA Systems Integration Office (DSIO-J)** will provide computer machine time required to process the program managers' requirement.

5. Directorate of Customer Products and Services (**DLIS-V**) will:

a. Provide **DLIS-VSS** with FOIA extracts.

b. Forward to **DLIS-VSS** all requests received from the general public for any FOIA information/data.

6. Directorate of Requirements Control and Management (**DLIS-B**)/Equal Employment Opportunity Office (**DLIS-DK**) will forward to **DLIS-VSS** all requests received from the general public for any FOIA information/data.

7. **The Office of the Comptroller (DRMS-R)** will:

a. Receive customers' checks from **DLIS-VSS** and HQ DRMS office/directorates for accounting input and forward to DFAS-CO with a cash collection voucher to be deposited into an U.S. Treasury Receipt Account.

b. Forward to **DLIS-VSS** all requests received from the general public for FOIA information/data.

8. The Office of Public Affairs (**DRMS-J**) will serve as the central point for release of information to the news media.

9. The Office of Counsel (**DRMS-G**) will:

a. Maintain for examination and copying by the public, and provide as needed to the DRMS activities, all publications listed in paragraph I of DLAR 5400.14.

b. Provide advice and assistance in determining releasability of records.

c. Process appeals to the Commander, **DLIS/DRMS**, of denials to provide records.

d. Coordinate denials of releases with General Counsel, DLA, as appropriate.

e. Determine if cases should be referred to DLA-DG and make the referral in accordance with paragraph VIIB8 of DLAR 5400.14.

10. Heads of HQ DRMS Offices/Directorates will:

a. Ensure that the provisions of this instruction and DLAR 5400.14 are followed in processing FOIA requests for records from members of the public.

b. Forward to **DLIS-VSS** all FOIA requests from the general public for any information/data in order that the request can be properly controlled.

c. As a minimum, coordinate with **DLIS-VSS** prior to releasing records to the public.

d. Furnish **DLIS-VSS** with a copy of response and a completed DLA Form 1786 for every FOIA request to which the office/directorate responds.

e. Assess direct search, review and duplication costs in accordance with this instruction and notify the requester:

(1) Of the cost involved.

(2) That payment must be received in advance unless the fee is less than \$250 and the requester has a history of prompt payment.

f. Obtain concurrence from DLIS-VSS and DRMS-G prior to denying records/data to the public.

g. Prepare denial for command signature (DRMS-D).

h. Furnish DLA, DDS-C and **DLIS-VSS** with a copy of all denials.

i. Designate an individual to represent them and serve as principal point of contact with **DLIS-VSS** and DRMS-G on matters concerning FOIA. Notify **DLIS-VSS** and DRMS-G of designee and any subsequent changes in designation.

j. Coordinate with the designated point of contact within the staff element before initiating action on a FOIA request.

k. Ensure that designated principal point of contact is afforded adequate training in responding to FOIA requests for records.

11. The Commanders/Directors, **DRMS Field Activities** will:

a. Ensure that the provisions of this instruction are followed in processing FOIA requests for records from members of the public.

b. Ensure that internal operating records and official records are properly safeguarded during the time they are made available for examination by a member of the public.

c. Ensure reports required by this instruction are sent to **DLIS-VSS** for consolidation and forwarded to **DLIS-VSS** 10 days prior to DLA suspense date.

d. Maintain for examination and copying by the public a copy of those publications listed in paragraphs VIIB3b through e of DLAR 5400.14.

e. Obtain from DRMS-G, as needed, those publications listed in paragraph I, DLAR 5400.14. (DRMR-Europe will obtain from DLA Office of Counsel, Europe.)

f. Establish and maintain procedures to properly control FOIA requests.

g. Designate an individual to serve as principal point of contact on matters concerning FOIA. Notify each DRMO, in writing, of region's designee.

- h. Ensure designated principal point of contact is afforded available training in responding to requests from the public for records.
- i. Specify that remittance for search, review and duplication fees be made payable to the U.S. Treasury.
- j. Ensure **DLIS-VSS** is provided a copy of each FOIA denial.
- k. Ensure coordination by DRMS-G prior to making a denial of a FOIA request. (DRMR-Europe coordination will be by DLA Office of Counsel, Europe.)
- l. Furnish **DLIS-VSS** with completed copy of DLA Form 1786 for every FOIA request.
- m. Assess direct search, review and duplication costs in accordance with paragraph 21, and notify the customer of the cost involved.

12. Each Property Disposal Officer (PDO) will:

- a. Receive and properly control all DRMS FOIA requests.
- b. Serve as the principal point of contact on matters concerning FOIA.
- c. Establish controls to ensure provisions of DLAR 5400.14 are followed and prompt response is made to all such requests.
- d. Following coordination with **Zone** FOIA principal point of contact, refer requests for publications listed in paragraph I, DLAR 5400.14, to the applicable activity.
- e. Ensure compliance with DLAR 5400.14, paragraph VIIB1. Timeliness is important in handling/processing FOIA requests, which might pose difficulty due to DRMO remote locations.
- f. Ensure prior coordination with **Zone** principal point of contact prior to referring FOIA request to any other source.
- g. Obtain **Zone** and DRMS-G approval in support of any decision to deny record/information release.
- h. Furnish **Zone Office** a copy of all responses to FOIA requests and a completed DLA Form 1786.
- i. Assess direct search, review and duplication costs in accordance with paragraph 21 and specify remittance be made payable to the U.S. Treasury.

13. Freedom of Information Act Manager will:

- a. Establish procedures to receive, control, process and screen FOIA requests. To provide for rapid retrieval of information, a central log of all incoming FOIA requests will be maintained.
- b. Review requests to determine if they meet the requirements of 5 U.S.C. 552. Determine category of the requester before assigning the request for search. Provide instructions to the searching office on fees and time limits for response.
- c. Consult with requesters, where necessary, to determine requester category and to resolve fee issues.
- d. Establish training and education program for those personnel who may be involved in responding to FOIA requests.
- e. Approve requests for formal extensions of time and notify requesters in writing of the extension.
- f. Grant or deny requests for fee waivers or requester category determinations and provide DLA, DSS-C with a copy of each such denial.
- g. Establish procedures to ensure that paragraph E14 regarding consultation with submitters of information is complied with.

h. Establish procedures for the collection and deposit of fees for FOIA services.

i. Ensure that DLA Form 1786 is completed and maintained for each case file.

j. Establish procedures to ensure that record denials and no record found determinations are signed by the PLFA initial denial authority and a copy forwarded to DLA, DSS-C.

k. Notify DLA, DSS-C of requesters who have failed to pay fees in a timely manner.

l. Prepare and submit reports as required.

m. Consult with public affairs officer (PAO) to become familiar with subject matter that is considered to be newsworthy and advise PAO of all requests from news media representatives.

n. Establish procedures to provide the Congressional Affairs focal point with an information copy of each FOIA request received from a member of the Congress.

o. Coordinate proposed supplements or training material with DLA, DSS-C prior to publication or dissemination.

p. Establish procedures to ensure that case files of FOIA releases are maintained for 2 years after cutoff and that denials are maintained for 6 years after cutoff.

q. Coordinate on all FOIA full or partial denials.

G. EFFECTIVE DATE AND IMPLEMENTATION. This publication is effective and shall be implemented upon signature by **DLIS Deputy**.

H. INFORMATION REQUIREMENTS

1. Reports. The reporting requirement outlined in this instruction is assigned Report Control Symbol DD-PA(A)1365. Existing DOD standards and registered data elements are to be used for all data requirements to the greatest extent possible.

2. Forms. The following forms are authorized for use:

a. DLA Form 22, For Official Use Only Cover Sheet.

b. DLA Form 1471, Freedom of Information Act Request.

c. DLA Form 1776, Freedom of Information Act Annual Report Worksheet.

d. DLA Form 1786, Freedom of Information Act Cost Sheet.

e. DLA Label 1804, For Official Use Only Sticker.

f. DLA Form 1805, Freedom of Information Act Request Control Log.

g. DD Form 2564, Annual Reports, Freedom of Information Act.

h. **DLIS** Form 1702, FOI Check Register.

BY ORDER OF THE COMMANDER

/s/

RICHARD B. MAISON
Deputy

